

REMARKS

Claims 22-37 are pending in the application. Claims 22, 23, 29, 30, and 32-36 are withdrawn as being drawn to non-elected inventions. Claims 24-28, 31, and 37 are under consideration. Claims 22, 24, 25, and 37 have been amended to address the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 112, second paragraph. The present amendments do not introduce new issues, and place the subject application in condition for allowance and/or simplify issues for appeal. Accordingly, entry of the amendments is proper and respectfully requested. Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

Written description rejection under 35 U.S.C. § 112, first paragraph

Claims 24, 27, 28, and 31 have been rejected under the first paragraph of 35 U.S.C. 112 for alleged lack of an adequate written description. This rejection is traversed for the reasons previously made of record in the response to the Office Action of November 27, 2002.

Rejection under 35 U.S.C. § 102

Claims 24, 27, 28, and 37 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by the reference of Boll et al. (1993) J. Biol. Chem. 268:12901-12911). In particular, the Examiner alleges that the sequence disclosed by Boll et al. anticipates the claimed polynucleotide fragments (Final Office Action, page 3).

As amended, claim 24 reads as follows:

24. An isolated polynucleotide encoding a polypeptide selected from the group consisting of:
- a) a polypeptide comprising an amino acid sequence of SEQ ID NO:1,
 - b) a polypeptide comprising a naturally occurring amino acid sequence at least 90% identical to an amino acid sequence of SEQ ID NO:1, and
 - c) an immunogenic portion of a polypeptide consisting of the amino acid sequence of SEQ ID NO:1 selected from the group consisting of:
 - i) an immunogenic portion consisting of contiguous amino acid residues 120 to 141 of SEQ ID NO:1, and
 - ii) an immunogenic portion consisting of contiguous amino acid residues 234 to 245 of SEQ ID NO:1.

The amendment to claim 24 clarifies that claim 24 and dependent claims 27 and 28 are drawn to polynucleotides encoding immunogenic portions consisting of contiguous amino acid residues of SEQ ID NO:1 over the specified residue ranges. Applicants wish to clarify that each claimed fragment includes

all of the residues in the specified range and not “any 5 consecutive amino acid sequence from the specifically recited fragment,” as indicated by the Examiner.

Claim 37, as amended, recites “[a] fragment of a polynucleotide consisting of the sequence of SEQ ID NO:3 from nucleotide 1015 to nucleotide 1055.” Applicants believe the amended claim is not anticipated by the reference of Boll et al.

Applicants submit that none of the polynucleotide fragments as currently claimed are anticipated by the reference of Boll et al. Therefore, withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Rejection under 35 U.S.C. § 112, second paragraph

Claims 24, 27, 28, and 37 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being “indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” (Final Office Action, pages 4-5).

In particular, the Examiner asserts that the “metes and bounds” of claim 24 are unclear with respect to the claimed polynucleotide encoding “an immunogenic portion of a polypeptide.” As mentioned above in the discussion of the rejection under 35 U.S.C. § 102, Applicants believe that claim 24, as currently amended, more clearly indicates that the claimed polynucleotides encode immunogenic portions consisting of contiguous amino acid residues of SEQ ID NO:1 over an entire specified residue range. Therefore, the scope of claim 24 and dependent claims 27 and 28 is now clear.

With respect to claims 24 and 37, the Examiner states that “it is not clear which limitation ‘comprising’ or ‘consisting’ controls the scope of the claims.” To expedite prosecution, the scope of claim 24 c) has been clarified by removal of the term “comprising” and replacement with the term “consisting of”. Claim 37, has been amended to recite the term “consisting of” exclusively.

For at least these reasons, withdrawal of the rejection under the second paragraph of 35 U.S.C. §112 is respectfully requested.

Objection to the Specification

Applicants have amended the specification to remove the matter that was introduced in the amendment filed in response to the Office Action of November 27, 2002, as requested by the Examiner. Therefore, withdrawal of the objection is respectfully requested.

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Objections to the Claims

Claims 24 and 25 have been amended such that they no longer depend on non-elected claims.
Withdrawal of the objections to these claims is therefore respectfully requested.

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CONCLUSION

In light of the above amendments and remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding objections/rejections. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicants' Attorney/Agent below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108, as set forth in the enclosed fee transmittal letter.

Respectfully submitted,
INCYTE CORPORATION

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